

**MINUTES  
OCTOBER 3, 2008**

**Call to Order**

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:05a.m., on Friday October 3, 2008, in Room 152 of the State Capitol Building, 1301 East 6<sup>th</sup> Avenue, Helena, Montana.

**Attendance**

**Board Members Present Via Telephone:** Chairman Joseph Russell, Heidi Kaiser, Don Marble, Larry Mires, Bill Rossbach, and Robin Shropshire.

**Board Members Not Present:** Gayle Skunkcap

**Board Attorney Present:** Katherine Orr, Attorney General's Office, Department of Justice

**Board Secretary Present:** Kris Brewer

**Court Reporter Present:** Laurie Crutcher, Crutcher Court Reporting

**Department Personnel Present:** Tom Livers, Deputy Director; John North and David Rusoff, Legal; John Arrigo, Enforcement Division; Carson Coate, Chuck Homer, and Deb Wolfe, Permitting and Compliance Division Air Resources Management Bureau

**Interested Persons Present:** Jeff Chaffee, *Bison Engineering*; Dave Veeder, *CHS* (via phone)

I.A.1. Review and approve August 8, 2008, meeting minutes.

Mr. Mires MOVED to approve the August 8, 2008, meeting minutes. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.A.1.a In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.

Hearing Examiner Katherine Orr reported that the Department is still waiting for some water quality data and then an Environmental Impact Statement (EIS) approximately November of 2009.

II.A.1.b In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.

Hearing Examiner Katherine Orr reported that ASARCO is still in bankruptcy. The Department has requested payment in full of the penalties and there has been no objection to the request.

II.A.1.d In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.

Hearing Examiner Katherine Orr reported that SME has requested a stay of six months in this case pending EPA clarification of a test method for condensable particulate matter.

II.A.1.g In the matter of violations of the Opencut Mining Act by James Timis at the Timis Excavation Site Flathead County, MT, BER 2008-02 OC.

Hearing Examiner Katherine Orr reported a hearing has been set in this case for April of 2009.

II.A.1.h In the matter of violations of the appeal by Plum Creek Manufacturing, Inc. of its Montana Groundwater Pollution Control System Permit No. MTX00092, BER 2008-06 WQ.

Hearing Examiner Katherine Orr reported that Plum Creek has withdrawn their request for an appeal and a dismissal will be present to the Board at the December meeting.

II.A.1.j In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.

Hearing Examiner Katherine Orr reported that Helena Sand and Gravel filed for Intervenor status on August 28<sup>th</sup> and Ms. Orr granted that status on September 16, 2008.

- II.A.1.1 | In the matter of violations of the opencut mining act by TMC, Inc. at the Nuss Pit, Gallatin County, Montana, BER 2008-10 OC.
- Hearing Examiner Katherine Orr reported that a hearing in this case is schedule for March 5, 2009.
- II.A.1.c | In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.
- II.A.1.e | In the matter of the appeal by ExxonMobil regarding its Air Quality Operating Permit No. OP1564-02 for the Billings Refinery, Yellowstone County, Montana, BER 2007-27 AQ.
- II.A.1.f | In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.
- II.A.1.i | In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-07 HW (MT Waste Systems).
- II.A.1.k | In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-09 HW (Three W's).
- Ms. Orr had no further information than that provided in the agenda for items II.A.1.c, e, f, I, and k.
- II.A.2.a | In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.
- Hearing Examiner Katherine Orr gave a brief history of the case. Ms. Orr then stated that the Department and TRP have both filed motions to intervene. The court has granted the Department's motion on September 23, 3008, but has not yet ruled on TRP's motion.
- II.A.2.b | In the matter of the appeal by Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to Southern Montana Electric (SME) for its Highwood Generation Station, BER 2007-07 AQ.
- Hearing Examiner Katherine Orr stated that there was an error in the agenda; SME was the party to file an intent to file and the motion was granted on September 19, 2008. She also stated that Judge Mc.Kittrick assumed jurisdiction in the case.
- III.A.1 | Amend ARM 17.8.308, 17.8.504, 7.8.744, and 17.8.1205 regarding agricultural exemptions from air quality rules and changes regarding operating permit application

and Montana Air Quality Application processes and the associated fee rule.

Debra Wolfe presented the Board with background on the proposed rulemaking. Carson Coate answered questions from Board members regarding the intent of the legislation. Mr. Mires MOVED to initiate rulemaking and to appoint Katherine Orr as the Hearings Examiner. Mr. Marble SECONDED the motion. The motion carried with a unanimous VOTE.

- III.B.1 In the matter of the amendment of ARM 17.8.505 and 17.8.514 for the annual adjustment of air quality operation and open burning fees.

Debra Wolfe presented the Board with background on the proposed rulemaking. Mr. Rossbach MOVED to adopt the notice of amendment and the Hearings Examiner report. Ms. Shropshire SECONDED the motion. The motion carried with a unanimous VOTE.

- III.B.2 In the matter of the update the Air Quality Incorporation by Reference Rules at ARM 17.8.102, 17.8.301, 17.8.901, 17.8.1007, 17.8.1206, 17.8.1212, 17.8.1232, 17.8.1234, 17.8.1234, 17.8.1302, 17.8.1402, 17.8.1502, and 17.8.1509 (annual update and housekeeping changes).

Debra Wolfe presented the Board with background on the proposed rulemaking. Mr. Mires MOVED to amend the regulation and adopt by reference except with the proposed addition of 17.8.102. Ms. Shropshire SECONDED the motion. The motion carried with a unanimous VOTE.

- III.C.1 In the matter of the violations of the Opencut Mining Act by Helena Sand and Gravel, Inc. at the Lake Helena Drive Pit, Lewis and Clark County, Montana, BER 2008-12 OC.

Mr. Mires MOVED to appoint Katherine Orr the permanent Hearings Examiner. Mr. Rossbach SECONDED the motion. The motion carried with a unanimous VOTE.

- III.C.2 In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at the Wilderness Club Eureka, Lincoln County, Montana, BER 2008-13 WQ.

No action was taken on this case.

- III.D.1 In the matter of the appeal by CHS Inc. regarding its Title V operating permit No. OP1821-01 for the Laurel Refinery, Laurel, Montana, BER 2007-23 AQ.

Mr. Rossbach MOVED to allow the Board chair to sign the order of dismissal. Mr. Mires SECONDED the motion. The motion carried with a unanimous VOTE.

- III.D.2 In the matter of violations of the Montana Public Water Supply laws by Dale's Dairy at Dale's Dairy Convenience Store, Missoula, Montana, BER 2008-11-PWS.

Ms. Kaiser MOVED to allow the Board chair to sign the order of dismissal. Ms.

Shropshire SECONDED the motion. The motion carried with a unanimous VOTE.

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DEQ Deputy Director Tom Livers spoke briefly about the December meeting. The plan is to hold a face-to-face meeting at that time as some rulemaking will need to be discussed. At the December meeting a draft 2009 meeting schedule will also be presented for the Board to act on at that time.

IV.A Public Comment

Chairman Russell called for general public comment. No one responded.

V Adjournment

Mr. Rossbach MOVED to adjourn. Mr. Marble SECONDED the motion. The motion carried with a unanimous VOTE.

The meeting adjourned at 9:45 a.m. on October 3, 2008.

Board of Environmental Review October 3, 2008, minutes approved:

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JOSEPH W. RUSSELL, M.P.H.  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

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DATE